IN THE  UNITED STATES DISTRICT COURT
FOR THE  DISTRICT OF MASSACHUSSETTS

| | | |
|---|---|---|
| ANTHONY BAYAD , | ) | |
| | ) | |
| Plaintiff , | ) | **CIVIL ACTION** |
| | ) | |
| | ) | |
| | ) | **CASE NO. 04-cv-10468-GAO** |
| | ) | |
| JOHN CHAMBERS, PATRICIA | ) | |
| RUSSO, ANTHONY | ) | |
| SAVASTANO and CARL | ) | **HONORABLE   DISTRICT JUDGE O' TOOLE** |
| WIESE, | ) | |
| Defendants , | ) | |

**PLAINTIFF PRO SE  BAYAD  OBJECT TO THE MAGISTRATE REPORT AND
RECOMMENDATION**

I.    **STATEMENT OF FACT**

Wherefore,  Defendants and their Lawyers, at different times, has given

"**different**" and arguable inconsistent explanations for terminating Bayad '

employment with Cisco and with other claims stated herein, Jury may infer

that articulated reasons are pretexts for race discrimination.

See *Dominguez-Cruz    v.   Shuttle Caribbean , Inc*. 202 F.3d  424, 431-32,

(1st Cir.). (Defendant  inconsistent or changing Explanation). And *In Reeves*

*v. Sanderson plumbing Products, Inc*. 530 **U. S.**  133,  147-49 (2000). The

Supreme Court states:

"   that proffering a false reason for the challenged action would
ordinarily support the inference that real reason was unlawful, and
such proffer may be made in the Defendants ' origin explanation to the
plaintiff, in its position statement to the (EEOC) or other enforcement
agency, in its response to discovery, in its pretrial  Court Filing, or in
its efforts to confuse   Jury during opening or closing statements.  In
none of these Situations is the Plaintiff barred from relying on the
employer's deceit unless the employer attempts to repeat the deceit in
the evidence it offers at trial.  Nowhere in the law is there rule that a
**liar** suffers adverse consequences **only if he or she repeats the lie
in Court.** "

1

Defendants and their attorneys various explanation and statements and records, attempt to conceal its true reason for taking the challenge action, which is considered a lie and a conduct aimed to evade this federal proceeding.

## II.    **DEFINITION OF DISCRIMINATION**

To discriminate is to make a distinction, to make a difference in treatment or  favor, and those distinctions or differences in treatment or favor which are prohibited . . . are those which are based on any five of the forbidden-criteria : " **Race**"  ( applies  **Title 42 § § 1981, 1985(3) )**, Religion,  Sex ,  and  National Origin.

## III.    **STATEMENT OF ISSUE AND OBJECTION**

Plaintiff Pro Se Bayad respectfully object to the Magistrate Report and recommendation to allow Defendants Motion for Summary Judgment as it is premature at this stage of this litigation, (objected) on [3] ground(s) and stating  the following facts:

## 1. **On Ground One**

**The rules of law was designed and introduced to enforce the compliance of  the proceeding  of Discovery** as matter of rights and to recognized that natural person (such as Bayad) have right to represent him self as matter of rights, which  is described as " a basic right of free people". *Farretta  v.  California*, 422 **U.S.** 806, 95 S.C.t. 2525, 45 LE.d 562 (1975); and the Court should endeavor to construe *Pro Se* complaint and the Cross-Motion for protection of Civil Rights with utmost liberal reading and interpretation of Law, and without regard to technicalities . *Gale v. Wagg*, E.D. Mich.1956, 140 F. Supp. 6., also *Stambler v. Dillon*, S.D.N.Y. 1969, 302

F. Supp.1250. Defendants ` attorneys did not allow the discovery to be proceeded and  was denied to  Bayad Pro Se,  wherein  the applicable Law set forth by the American Bar Association Rules,  the Massachusetts Bar Association Rules  of Professional Ethics, including the Office of the Judicial commission Rules and Regulations, and the Constitution of our land , are meant to be applied and served with  the  Integrity of judicial process,  that demands compliance and protection and equality to  minority litigants similar situated as Bayad, demand for the attorneys of Piper Rudnick (officers of the Court) to comply fully with the Rules of Law and the  Court Rules and Orders, and it is not  for them (attorneys of Piper Rudnick) call to bar of justice is not for them to  decide, and their "opinion" is not a record set forth in Federal Proceedings. They cannot insert Declaration of their own as they are not defendants absent of facts and evidence, to decide on behalf of the Court  who at their discretion granted them  with prejudice to cut short Discovery in civil rights case,  where state of mind is at stake.  the Magistrate Judge  did not provide any means to cooperate discovery materials  as the subpoena or the name or background of the Cisco White Engineer nominated the best Engineer or even his name as stated in the Magistrate Report and Recommendation etc.., but  the only action  the magistrate took is to order  the United State Marshall to conduct a criminal background check on  Bayad *Pro Se* and to post his smiling picture on the wall of this Court, and without justification or any violation of the law ( What can we say? is because Bayad is a Moroccan or it is a crime to pursue Justice that is secure  by the Right of Due Process of the law of his land).

However the facts proven that each time Bayad secure a Job in his field that he was trained to do and that it is the only thing he knows to do and nothing else, he gets fired and humiliated By Savastano and Wiese, it is a shame. The Court must not promote Racism and send a message to individuals and to corporate of America that it is Ok to discriminated upon Minorities similar situated as Bayad, but must act with the arm of justice as prescribed under the law, that it is not Ok to classify Minorities ( Arabs) in the list as Cisco-No-Hire-List not to be hired, that it is not Ok to create a policy as Cisco Equal Opportunity to entertain the flow of minorities that is sent to them during the interview process. That it is not Ok to promote racism in the making of Certification, pay scale, hiring and firing, that it is not Ok to openly allow Cisco Manager (s) to defame the minority engineers each time they are trying to secure a job to support them selves and their families in their country the United States of America, and that is not Ok to humiliate , disgrace Minorities similar situated as Bayad, with any mean(s), action(s ) or language(s) or Email(s) or Audio(s) about the way they speak, communicate, and look or act on the basis of their race , Gender , Origin, Religious, Handicap statue, and the list goes on and on and does not stop ...it is shame.

The message that the Court must sent is if you are an Executive, you are not above the law and you must obey the law and respect the equality and fairness of the people of the land that are struggling every day to bring food to their table, and Even though you are the Chief Officer of the Company and White of Race with public money and with the Golden Parachute, and

the Millions of money stashed and hidden in numbered Suisse Account , you

are not immune from participating in the Federal litigation and you are going

to be treated as any citizen of the land.

## 2.   **On Ground Two**

However, in the absence  of Discovery the Magistrate Judge   " must

Careful" distinguish between opinions of Attorneys and Plaintiff' evidence,

that allows for a  reasonable inference of discrimination". *Bickerstaff      v.*

*Vassar College*, 196 F.3d 435, 448 ( 2d Cir);   See also *Straughn    v.    Delta*

*Airlines, Inc.*, 250 F.3d 23,  33 ( 1st Cir. 2001),  the court states :

> "Caution must be exercised in particular before [sustaining] Summary
> judgment[s]  for employers on such issues as pretext, motive, and
> intent.

In considering allowing Defendants motion for Summary even  in the

absence of discovery, the Magistrate Judge must construe the evidence and

the interference drawn from the underlying facts  in the light most favorable

the nonmoving party (Pro Se Bayad) opposing the motion. *United States  v.*

*Diebold, Inc.*, 369 **U.S.** 654, 655, 82 S.Ct. 993, 994, 8LE.d. 2d 176 (1962);

Hence,  [T]he weighing of the evidence, and drawing of legitimate inference

from the facts are [tier of act] function, not the opinion of an attorney or the

Magistrate Judge (in absence of Discovery ). who may influence the

ruling on the motion for summary ( as they have done with Discovery). The

evidence of the nonmoving Bayad is to be believed, and all justifiable

inferences are to be drawn in his favor; Nor do any one suggest that district

Court should act than with caution in granting summary judgment or that

the district Court may not deny summary judgment in a case where there is

reason to believe that <u>the better course would be to proceed to **"full trial"**</u>.

Furthermore, facts asserted by the nonmoving party  Bayad opposing

the summary judgment <u>must be regarded as true</u> when it is supported by

affidavit or other evidentiary material.  *Coke v.  General Adjustment Bureau,*

*Inc.*, 640 F.2d  584, 595 ( 5th Cir. 1981) ( quoting 10c Charles A. Wright

and Arthur R. Miller, <u>Federal Practice and Procedure</u>, § 2727 at 524-30

( 1973)). Hence the court must consider  all the facts  under the law

introduced by Bayad , therefore he has prevailed and Prima Facie is

established on his counts under the Civil Rights Law of title 42 Section (§)

1981 ( the count stated in Dkt.1, Retaliation, Disparate Treatment,

Conspiracy, Denying the CCIE to Arabs and Violation of section 1981 and

1985), but that was not the case said by such report and recommendation .

## 3.    **On Ground Three**

The analysis applied to cases under § 1981 is the same as applied in Title

VII cases.  *Roxas    v.    Presentation College*, 90 F.3d 310, 315 (8th Cir.

19960).    *Brown  v. American Honda Motor Co*., 939 F.2d 946, 949 ( 11th

1991), cert.  denied, 502 U.S. 1058, 112 S. C. t. 935, 117 L.E.d.2d 106

(1997).  Therefore,  accordingly to the  Magistrate Report  and

Recommendation the court decided to pursue in  analyzing Bayad

claims under the *McDonnell Douglas* standard;  And under the *McDonnell*

*Douglas* Standard  of proof, Bayad *Pro Se* **established**  *Prima Facie* case of

intentional discrimination.  *McDonnell Douglas*, 411 U.S. at 802, Bayad met

this burden, there was  a presumption that intentional discrimination has

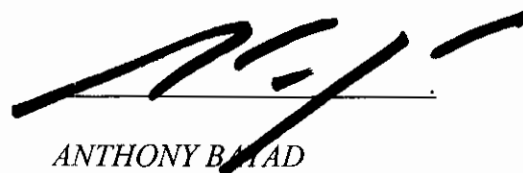occurred. Burdine,  450 **U.S**. at 254 ;   See *Fernandez v. Costa Brothers*

*Masonry, Inc.*,  199 F.3d 572, 584 (1st Cir.), in section C, 10,  See also

*White  v.  New Hampshire  Department of Corrections*, 221 F.3d  254, 262,

(1st Cir. 2000);   See also *Cruz-Ramos   v. Puerto  Rico Sun Oil Co*. 202 F.3d

381, 384 (1st Cir.). Thereafter, the presumption raised by  Bayad 's  prima

Facie case was not rebutted by Cisco Defendants 's articulation of a

legitimate,   Although Defendants did not meet the burden at the stage of

the litigation as it should be and is one of production, and not persuasion,

and  thus not onerous, the burden cannot be met by mere formality as they

have done in this litigation.    *Walker v. Mortham*, 158 F.3d 1177,  1184

( 11st Cir. 1998). Instead " [t] he  defendant(s)  must clearly set forth,

through the introduction of <u>admissible evidence</u>," the reason for its adverse

action, and that reason " must be legally sufficient to justify a judgment  for

Defendants." Unfortunately they failed to do so. Burdine, 450 U.S. at 255.

the Defendants did not carry its burden by  producing evidence of legitimate

of nondiscriminatory reason for its action, the presumption of discrimination

raised by Plaintiff' *Prima  Facie* case was established by Preponderance of

evidences and past history of disparate treatment while back in Florida with

Lucent Technologies and now with Cisco . Bayad was able to prevail by

demonstrating that the defendant's reason was but a  pretext for

discrimination – not credible or was not real basis for its decision, then

judgment must be entered in favor of Plaintiff and not the Defendants as the

Magistrate' report and  recommendation suggest otherwise and introduced

herein. *Mauro    v.   Southern New England Telecommunication*, Inc., 208

F3.d 384, 387-88 ( 2d Cir.);  See also *Cruz  Ramos   v.   Puerto Rico Sun Oil*

_Co._, 202 F.3d 381,385 (1st Cir.) ; See _Arrington v. Cobb County_,139 F.3d 865, 873  11th Cir. 1998) ( citing Burding, 450  U.S. at 252-53, 101 S.Ct. at 1093).  Additionally Bayad  has proven with proof of <u>concrete evidences</u> and strong  proof 's proof that Defendants reason  was disbelieved coupled with elements  of his prima Facie case raises an inference of intentional discrimination to  defeat Defendants Summary Judgment motion . _Mary 's honor Center  v.  hicks_, 509 U.S. 502, 511 ( 1993);    _Combs   v. Plantation Patterns_, 106 F. 3d 1519 ( 11th Cir. 1997).  See also _Fernandes v. Costa Brothers Massonry_ , Inc., 199 F.3d  572 , 584 n.4 ( 1st Cir); Also see _Smith     v.  Davis,_ 248 F.3d 249, 251, ( 3d Cir. 2001).   Therefore the weighting of the  evidence,  and drawing of  legitimate inference from the facts are [**tier of fact**] function and the evidence of  nonmoving is to be believed, and  all justifiable inferences are to be drawn in Bayad `  favor by [**tier of fact**]  and  not by the  Attorney' opinion of record is not  a record set forth in Federal  Proceeding  in this Court.

## CONCLUSION

There is, within this understanding, no right to freedom from distinction in treatment of hate crimes , executed upon Bayad  at Lucent Technologies Florida and now Cisco Systems Massachusetts at the  hand of Defendants Tony Savastano and Carl Wiese at  [3] companies Lucent Technologies, International Network Services and now Cisco Systems . There is no right to freedom from refusal to hire, discharge, lay off or other employment-related action  on discriminatory grounds, and therefore justice must intervene and protect its Citizens similar situated as Bayad. Defendants

Defendants ' Summary Judgment must not be allowed and the applicable the

7<sup>th</sup> amendment of the United stated of Constitutions  must be granted or as

deemed and required by Law and by the Honorable District Judge  O" Toole.


ANTHONY BAYAD

## CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of Plaintiff Bayad `
objection to the Magistrate  Report and Recommendation, was furnished via U.S.
mail to : Bruce E. Falby,  BBO #544143, PIPER RUDNICK LLP,  One International
Place, Boston MA 02110, this .**31**. day of May  2005 .

Pro Se ANTHONY BAYAD
2 MAGOUN AVENUE
MEDFORD, MA 02155
(781) 704-8982

ANTHONY BAYAD

10